

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:22-00010

TED ALLEN TOPEKA, SR.

**MEMORANDUM OPINION AND ORDER**

Pending before the court is the motion of defendant for a continuance of trial and all related deadlines. (ECF No. 36.) In support of defendant's motion, counsel for defendant explains that defendant needs time to independently verify lab reports and analysis of substances seized in this case. The logistics of doing is expected to take one or two months. Defendant accordingly asks that the court grant a continuance to accommodate the independent testing process, which cannot be completed within the timeframe of the current scheduling order. Defendant acknowledges that the delay resulting from the continuance he seeks is excludable under the Speedy Trial Act.

Because failure to grant the requested continuance would likely result in a miscarriage of justice, the court finds that the ends of justice outweigh the interest of the defendant and the public in a speedy trial, see 18 U.S.C. § 3161(h)(7)(A), and **GRANTS** defendant's motion to continue. In deciding to grant defendant's motion, the court considered the factors outlined in

18 U.S.C. § 3161(h)(7)(B) and finds that denying the motion "would deny counsel for the defendant . . . the reasonable time necessary for effective preparation, taking into account the exercise of due diligence." Id. § 3161(h)(7)(B)(iv).

Accordingly, the court hereby **ORDERS** as follows:

1. The deadline for the filing of pretrial motions is continued to **July 13, 2022**;
2. The Pretrial Motions Hearing is continued to **July 20, 2022, at 2:30 p.m.** in Charleson;
3. Jury Instructions and Proposed Voir Dire are due by **July 27, 2022**;
4. Trial of this action is continued to **August 3, 2022, at 9:30 a.m.** in Charleston; and
5. Pursuant to 18 U.S.C. § 3161(h)(7)(A), the time from the filing of the motion until the trial is excludable for purposes of the Speedy Trial Act.

The Clerk is directed to send a copy of this Memorandum Opinion and Order to all counsel of record, to the United States

Marshal for the Southern District of West Virginia, and to the Probation Office of this court.

**IT IS SO ORDERED** this 29th day of April, 2022.

ENTER:

David A. Faber

David A. Faber  
Senior United States District Judge